

Item No. 06

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**Original Application No. 77/2020(CZ)
(I.A.No.73/2021)**

Aarya Shrivastava

Applicant(s)

Vs.

Union of India & Ors.

Respondent(s)

Date of Hearing: **06.12.2023**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s): Mr. Dharamvir Sharma, Adv.

For Respondent(s): Mr. Prashant M. Harne, Adv.
(with Mr. Ashish Singh, Collector, Bhopal)
Mr. Nishant Kesharwani, Adv.
(for Mr. Shoeb Hasan Khan, Adv.)
Ms. Parul Bhadoria, Adv.
Ms. Gunjan Chowksey, Adv.
(with Ms. Nidhi Singh, Addl. Commissioner,
BMC)

ORDER

1. Bhopal is known as City of Lakes.
2. Now the City of Lakes is in danger.
3. The previous rule of administration when the law was not developed was based on the principle –
 - i. Might is right.
 - ii. Power comes out of barrel of gun.
 - iii. Rule of Mobocracy
 - iv. Poverty anywhere is danger to prosperity anywhere.
4. Now in due course of development, education and on the principle of peaceful coexistence the new theory evolved are –
 - i. Pen is mightier than the sword.

- ii. Rule of Law will prevail.
- iii. Rule of Law cannot be taken away by law and order problem.
- iv. Democracy does not mean Mobocracy and Mobocracy cannot snatch/usurp the public/private property.
- v. Power in democracy comes out of button of ballot box.
- vi. When the law protector becomes law violator, how the law will be protected.
- vii. Law is command of sovereign and requires to be complied by everyone and executed by the executive.

5. The above lines may be read in light of the fact that the total machinery of the district administration including the higher authorities found themselves unable to exercise their duty sincerely and properly to remove the encroachments on the public land especially the Bhoj wetland Upper lake which is internationally acclaimed wetland. The helplessness of the state authorities/district administration to protect the state land and the wetland on the basis of the fact that mob gheroad them or created law and order problem and they returned back from executing the order and enforcing the Rule of law.

6. Collector being the head of the revenue and district administration is the custodian of the State property anywhere within his jurisdiction and if the property of the state is encroached by certain persons and administration feels helplessness then we will wait the period when the mob may also encroach the residences and offices of the administration to be used for residential purposes because they have no residence at all.

7. The pathetic situation shown in this case reveals that in a so called highly developed city of Bhopal there were 62 drains discharging their untreated sewage water into the water bodies, bhoj lake, the water of which is being supplied to most of the citizen of the city. In-spite of repeated directions from this Tribunal approximately 18 drains are still to be connected to the STP. The total quantity of the water (untreated) generation is approximately

390 MLD while the capacity to treat is only 130 MLD (approximately) (waste water) and there is a gap of approximately 180 MLD.

8. The matter of control on the discharge of the untreated water into the water body and remedial action with provision of imposing Environmental Compensation was taken up by this Tribunal in Original Application No. 593 of 2017, and it was directed as follows:

Directions in order dated 06.12.2019:

“XII. Directions:

47. We now sum up our directions as follows:

- i. 100% treatment of sewage may be ensured as directed by this Tribunal vide order dated 28.08.2019 in O.A. No. 593/2017 by 31.03.2020 atleast to the extent of in-situ remediation and before the said date, commencement of setting up of STPs and the work of connecting all the drains and other sources of generation of sewage to the STPs must be ensured. If this is not done, the local bodies and the concerned departments of the States/UTs will be liable to pay compensation as already directed vide order dated 53 22.08.2019 in the case of river Ganga i.e. Rs. 5 lakhs per month per drain, for default in in-situ remediation and Rs. 5 lakhs per STP for default in commencement of setting up of the STP.
- ii. Timeline for completing all steps of action plans including completion of setting up STPs and their commissioning till 31.03.2021 in terms of order dated 08.04.2019 in the present case will remain as already directed. In default, compensation will be liable to be paid at the scale laid down in the order of

this Tribunal dated 22.08.2019 in the case of river Ganga i.e. Rs. 10 lakhs per month per STP.

- iii. We further direct that an institutional mechanism be evolved for ensuring compliance of above directions. For this purpose, monitoring may be done by the Chief Secretaries of all the States/UTs at State level and at National level by the Secretary, Ministry of Jal Shakti with the assistance of NMCG and CPCB.*
- iv. For above purpose, a meeting at central level must be held with the Chief Secretaries of all the States/UTs atleast once in a month (option of video conferencing facility is open) to take stock of the progress and to plan further action. NMCG will be the nodal agency for compliance who may take assistance of CPCB and may give its quarterly report to this Tribunal commencing 01.04.2020.”*

9. It was reported, by the Municipal Corporation that there are more than 227 encroachments on the bhoj lake/water body and actions are being initiated to remove the encroachments but due to law and order problem the authorities were unable to execute it. There are further encroachments and violations by the 41 hospitals against which the reply of the Municipal Corporation and the State Pollution Control Board is to the effect that notices have been issued to them. After issue of notice it seems that the duty of the Municipal Corporation came to an end.

10. The matter was taken up again by this Tribunal on 28.02.2022 and the Tribunal observed as follows:-

- 1. “We find the situation to be extremely unsatisfactory. There appears to utter neglect of constitutional obligation by the State Authorities, to the prejudice of environment and public health. Dumping of bio-medical*

and other waste and discharge of untreated sewage into the water bodies is a great hazard to public health and crime under the law of the land. Such water may be consumed by human or other living beings and also used for irrigation, affecting food safety, apart from damaging the flora and fauna in the area, including the aquatic life. Discharge of sewage is also blatant contempt of Supreme Court directions in Judgment dated 22.02.2017 in Paryavaran Surakha Samiti vs. Union of India, (2017) 5 SCC 326. Further, encroachments involve violation of statutory Rules, particularly Rule 4 of the Wetland (Conservation and Management) Rules, 2017. There is also undoubted violation of Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 and Rules framed, Madhya Pradesh Town and Country Planning Act, 1973, Madhya Pradesh Municipal Corporation Act, 1956 and Bhopal Master Plan 2005. Any construction in catchment area upto 50 mtrs of the drain is illegal. The enforcement of Rule 4 for protecting the catchment area is not dependent on title to the property and even an owner is not permitted to raise construction in such 'No Construction Zone'. The lawlessness prevailing, as depicted from undisputed documents and findings in the reports of the statutory authorities need to be remedied on war footing by stringent action with the involvement of higher authorities of the State so as to enforce rule of law and restore environment and protect public health. Measures to be taken may include management of sewage by way of treatment and reuse. Help of Industries, who may use treated sewage for industrial purposes, may also be explored on such pattern at some places. This may require laying of pipelines to connect treated sewage to the industrial area, if adequate treatment facilities are not otherwise available with the Corporation. Demarcation of catchment area needs to be ensured with reference to the revenue record and summary action needs to be taken to remove

encroachments and instead to develop green belts along the drains, lakes and the Wetland. Further, the lakes need to hold sufficient water and lake water quality has to be maintained at least which may allow aquatic life to thrive. This is constitutional obligation of the State. Since inter-departmental coordination issues arise and matter has remained neglected for long, including for about four years, inspite of pendency of the matter before the Tribunal, oversight and involvement of highest administrative authority in the State has become necessary.

- 2. Accordingly, we direct the Chief Secretary, Madhya Pradesh to forthwith call a meeting of concerned Departments particularly Public Health, Irrigation, Environment, Urban Development and Revenue Departments. The Environment Department can be the nodal agency, unless otherwise directed by the Chief Secretary. Apart from the said concerned Departments, the statutory regulators – the State PCB and State Wetland Authority may also be associated. The meeting may take cognizance of the grim situation and prepare a broad roadmap for the course of action to be adopted with stringent timelines, budgetary support and identified and accountable authorities for performing the tasks identified and also monitoring mechanism. The joint Committee may ensure compliance of rule of law, protection of environment and public health and restoration of public assets from the encroachers, acting in collusion with concerned authorities, to the detriment of public interest. It may be ensured that henceforth no illegal constructions take place, pending action against the past violations. Wherever found necessary, CCTV cameras be installed. Water quality of water bodies be restored by preventing dumping of waste and discharge of effluents/sewage. Water quality monitoring has to be on regular basis, exploring possibility to keep water bodies aerobic for maintenance of oxygen and for atleast Class 'C' Water Quality criteria. It is sad to note that Health providers appear to be spreading diseases by dumping*

biomedical waste in water bodies, as found by the statutory regulators in the reports filed before this Tribunal. Health care establishments need to have either captive social and liquid water management facilities or common facilities in accordance with Bio-Medical Waste Management Rules, 2016.

3. *We are also disappointed with the attitude so far adopted by the State PCB in not levying realistic compensation as per law laid down by the Hon'ble Supreme Court inter-alia in M. C. Mehta & Anr. v. Union of India¹, Sterlite Industries (India) Ltd. v. Union of India², Goel Ganga Developers India Pvt. Ltd. v UOI³ and Mantri Techzone Pvt. Ltd. V. Forward Foundation and Ors.⁴. The compensation must include element of deterrence with reference to the financial capacity of the violator, considering cost of restoration and other factors which in the present case have been ignored for reasons best known to the State PCB. Wetland Authority appears to be disregarding its statutory obligation under Rule 4 of the Wetland Rules, 2017 of demarcating the wetland and maintaining the catchment area free of encroachment. Similar failures are patent on the part of the Municipal Corporation and other concerned authorities. We hope the statutory authorities will realize their constitutional and statutory obligations under the 'Public Trust Doctrine' of protecting the water bodies/lakes/wetlands in question and taking meaningful stringent action against the violators, including the hospitals who instead of providing health facilities have become source of destroying the health of a citizens and are not being made accountable for reasons best known to the authorities. The hospitals in question may be given last opportunity of compliance,*

¹ (1987) 1 SCC 395

² (2013) 4 SCC 575

³ (2018) 18 SCC 257

⁴ 2019 SCC online SC 322, Para 43-47

failing which the consents granted to them may be cancelled and criminal cases registered against their managements, as per law.”

11. The matter was again considered by this Tribunal on 24.07.2023 considering the replies submitted by the authorities and this Tribunal observed that the plea of lack of resources or man power or the protest raised by encroachers is nothing but an eye wash in as much as State has all its force at its command and it is difficult to understand that it cannot execute enforcement of law particularly, where some people have illegally encroached upon public land or have made constructions illegally on prohibited land. It appears that efforts have not been made wholeheartedly, diligently and honestly. Years together have passed and this matter is pending since 2020, and still non-compliance is evident. Even Chief Secretary, Madhya Pradesh, despite direction of this Tribunal, has failed to look into the matter. Effective steps on its parts have not been taken and at least, nothing has been placed on record to show earnest efforts on the part of Chief Secretary, Madhya Pradesh to get encroachments removed and comply with this Tribunal's order issued from time to time. This is very unfortunate that an officer of such a high position has failed to take effective steps despite directions and has not complied with this Tribunal's order.
12. We also do not find any reason as to why requisite Police Force is not made available to the Authorities concerned for execution of enforcement of law by removing encroachments and if that is so, Director General of Police, Madhya Pradesh must personally look into this matter as it is his responsibility to ensure compliance of rule of law in the State and to provide all assistance for this purpose.
13. On 21.07.2023 Mr. KVS Choudary, Commissioner, BMC has submitted an undertaking that removal of rest of the encroachments from the lake area is in process and, it has assured that the exercise shall be completed within

four months and as a last opportunity the Tribunal accepted the said undertaking and grant four months' time for removal of all encroachments from the lake area and submit compliance report. Direction was issued that in-case the said undertaking is not complied with and the entire encroachment is not removed, considering the fact discussed above as also lack of co-ordination and co-operation on the part of Senior most Authorities of State i.e., Chief Secretary, Madhya Pradesh and Director General of Police, including Commissioner of BMC, we had no option but to direct that, if encroachments are not removed completely within four months, Chief Secretary, Madhya Pradesh; Director General of Police, Madhya Pradesh and Commissioner, BMC shall remain present physically before Tribunal on the next date.

14. Now after more than four months, the matter was taken up today. During the course of hearing the District Magistrate, Bhopal, Municipal Commissioner, Bhopal and Additional Commissioner of Police, Bhopal are present physically.
15. The District Magistrate has submitted that the committee was previously constituted to remove the encroachments and committee has further conducted a survey and letters were issued to the person concerned for removing the encroachments.
16. It is further submitted that the Respondents are taking all possible steps for the removal of encroachments, despite facing resistance from the encroachers. Respondent No 5 is also in consultation with the State Government and is in the process of rehabilitating the encroachers by reallocating them to another place, which includes families to facilitate the smooth execution of the demolition procedure. In furtherance of this effort, the Respondent No. 5 wrote letters to the Bhopal District Collector on 18.08.2023 & 13.09.2023 and sought information regarding an alternate land for the rehabilitation of the encroachers and to take all required steps so as to remove the encroachment as per the directions.

17. Further, the Respondent No. 5 has entered its appearance in the above Writ Petition pending before the Hon'ble High Court, the Respondent no. 5 made all the efforts to get the stay vacated and the matter got listed on 05.12.2023 and after hearing the arguments of both the parties the Hon'ble High Court vide order dated 05.12.2023 disposed the said Writ Petition and directed the petitioners/encroachers to approach the NGT which is the competent authority herein within 10 days to seek the desired relief, meanwhile, the court also granted protection of 10 days to encroachers to do the needful. Consequently, Respondent No. 5 will proceed with the removal of encroachments at the disputed site after the said 10-day period, as until the expiry of the said period, Respondent no. 5 is unable to proceed against the said petitioners/encroachers in the due compliance of the said order of the Hon'ble High Court dated 05.12.2023. However, it is noteworthy that the order dated 05.12.2023 has not yet been uploaded to the official website of the Hon'ble High Court.
18. The District Magistrate has further submitted that the demarcation of the area has been done according to the rules and the property under forestry are for developing the forestry, has been handed over to the forest department to ensure the bifurcation pillars have been installed. After removal of 11 encroachments one aggrieved filed the writ petition before the Hon'ble High Court and approximately 90 were impleaded as party and the matter was finally heard and decided by the court after intervention of the respondent State and it is communicated that on 05.12.2023 (yesterday) the stay order has been modified with certain directions.
19. It is further submitted that another matter is pending in Madhya Pradesh Wakf Tribunal since 2018. The Collector is directed to ensure the early disposal of the case and direct the State counsel to do the needful, so that the matter may not be kept pending for more years.
20. Learned counsel for Municipal Corporation and the Collector has sought further three months time to submit the further action taken report. In the

meantime we direct the authorities concerned to expedite the matter and to ensure that encroachment must be removed and there shall not be any discharge of untreated water into the water bodies. State Pollution Control Board is directed to calculate the environmental compensation in light of the parameters laid down and discussed above and to further proceed for realisation of the environmental compensation according to rules.

21. The Environmental compensation may be on the basis of either per month rate or on the basis of per drain or on the basis of per MLD discharge of untreated water, which is quoted above and notified by the CPCB. The separate compliance report by the State PCB, Collector, Bhopal, Municipal Commissioner, Bhopal be filed before the next date of hearing. Copy of the order be communicated through e-mail to Chief Secretary, M.P., Secretary, Urban Development, District Magistrate, Bhopal, Municipal Commissioner, Bhopal and Member Secretary, MPPCB for information and necessary action.

List it on **12th March, 2024.**

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

06th December, 2023
O.A. No. 77/2020 (CZ)
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